IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2879 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KARANSINGH MANSINGH RATHOD

Versus

COMMISSIONER

Appearance:

MR YV SHAH for the Petitioner.
MR JR NANAVATI for Respondent No. 1,11-12
MR BIPIN I MEHTA for Respondent No. 2,4,5,9-10
MR AR THACKER for Respondent No. 3
MR BHARAT T RAO for Respondent No. 4,6-8,10

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/12/2003

ORAL JUDGEMENT

1. By filing this petition, it is prayed by the petitioner that the action of the Corporation in giving

promotion to the juniors to the petitioner, i.e. respondents 2 to 10, is arbitrary and violative of Articles 14 and 16 of the Constitution of India. By way of amendment, it is prayed that the action of the Standing Committee of creating new posts is in violation of Section 51(4) of the B.P.M.C. Act, by which three separate Branches of Chief Auditor, Secretary and Commissioner are created, which has affected the service conditions of the petitioner adversely and it is also prayed that all consequential orders of promotion given to the juniors may be quashed and set aside.

2. The petitioner was, initially, serving in the Bhavnagar Municipal Borough, which was, subsequently, converted into a Corporation. After the Bhavnagar Municipal Borough was converted into Corporation, the Corporation created three different cadres in the year 1986, and the employees were allotted to the respective cadres, viz., Commissionerate / Audit Department and Secretariat. The grievance of the petitioner is that, at the relevant time, even though options were required to be invited, no such option was invited from the petitioner, and he was asked to continue under the Commissionerate of the Corporation. It is his case that if he was allowed to opt, he would have got better chances of promotion, either in Audit Branch or Secretariat Branch. Though there is no specific prayer, asking the Corporation to extend the benefit of option to the petitioner, during the course of the arguments, it is argued by Mr.Shah that as per the Circular of the Corporation, option was required to be brought to the notice of each of the employees about his wish for a particular Department, viz., either Commissionerate / Audit / Secretariat, and his signature was required to be taken. Since that procedure is not followed, the petitioner is denied of his right to opt for a particular Department. He submitted that by not giving such benefit, those employees, who were junior to the petitioner and who were given such benefit of option, were given higher promotion either in the Audit Branch or the Secretariat Branch. Since other employees have been promoted in Audit Branch or the Secretariat Branch, the petitioner has even challenged the aforesaid bifurcation. It is also argued that the promotion / appointment given to his juniors in other Branches, i.e, Secretariat or Audit, is in violation of the provisions of the BPMC Act and the said appointment was not made through the Staff Selection Committee, which is a mandatory requirement. Even in the Commissionerate Branch, in which he is serving, he was not given any promotion worth the name and, the petitioner is still continuing as Junior Clerk.

3. At the time of hearing of this petition, Mr.Shah, after taking consent from his client, has shown his willingness to make a representation to the Commissioner in connection with giving benefit of option with effect from appropriate date. Since it is not possible for this Court at this juncture to find out, from the material on record, whether option was invited from the petitioner or whether the petitioner, on his own, decided not to go for any other Branch, the petitioner has shown willingness to make representation in this connection by submitting appropriate representation to the Commissioner, giving appropriate particulars in connection with the so-called question about option. The petitioner may make appropriate representation to the Commissioner within a period of four weeks from today. In such representation, the petitioner may highlight whether he was aware about such right of giving option and factually, whether any option was invited from him. The Commissioner thereafter may decide such representation in accordance with law. While deciding the representation, the Commissioner may also decide whether any option was invited from the petitioner at the relevant time and whether the petitioner was entitled to opt. After considering the representation of the petitioner, the Commissioner may take appropriate decision expeditiously and in any case, within a period of two months from the date of receipt of such representation. However, the Commissioner may take decision in connection with the so-called question of option, keeping in mind the provisions of the Act and such decision may be taken in accordance with law. the decision taken on the representation may be communicated to the petitioner.

4. Till the petitioner is allowed to opt, naturally, he cannot have any claim to other Branches, viz., Audit and Secretariat Branches, and whatever promotions which might have been given to other Branches in absence of option, may not be of much relevance. Mr.Shah has, therefore, mainly contended that, at the relevant time, if the petitioner was given permission to opt, he would have opted for a better Branch, wherein he had better chances of promotion.

5. In the above view of the matter, the petitioner is permitted to make a representation and the Commissioner is accordingly directed to decide the representation within the stipulated time of four weeks. Such decision may be taken in accordance with law, and, on merits of this issue, this Court has not expressed any opinion in any manner. However, if the ultimate decision

on such representation is against the petitioner, liberty is given to him either to file substantive petition or to file a note for reviving this petition. The option is given to the petitioner in view of the fact that this petition is pending before this Court since considerable period.

6. In view of the aforesaid direction, regarding deciding the representation of the petitioner, Mr.Shah for the petitioner wants permission to withdraw this petition. Permission is granted. Petition is disposed of as withdrawn. Rule is discharged, with no order as to costs.

7. Since the petitioner is withdrawing this petition, all other contentions are not decided at this stage and it will be open for the petitioner to make representation on any other point in connection with the subject matter, as deemed fit.

17th December, 2003 (P.B. Majmudar, J.)

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(apj)